Petition

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IN THE

Supreme Court of the United States

OCTOBER TERM 1981

No.

SHEREE PATTERSON,
Petitioner,
vs.
THE HONORABLE GEORGE C. CARR,
United States District Judge for the
Middle District of Florida,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

PETITION

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QUESTION PRESENTED

DOES A FEDERAL DISTRICT JUDGE HAVE ABSOLUTE AND UNBRIDLED DISCRETION TO REJECT ANY PLEA AGREEMENT BETWEEN THE GOVERNMENT AND AN ACCUSED UNDER RULE 11(e) OF THE FEDERAL RULES OF CRIMINAL PROCEDURE, OR IS THIS DISCRETION SUBJECT TO ABUSE IF A PLEA AGREEMENT IS SO REJECTED FOR AN UNSOUND REASON?

PARTIES BELOW

United States of America

Hudson Eugene Holloway, AKA James LaRue

Marlene Padovan

Sheree Patterson*

James Thrasher

* Petitioner in this Court

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ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

SHEREE PATTERSON petitions for a Writ of Certiorari to review the decision of the United States Court of Appeals for the Eleventh Circuit in this cause.

OPINION BELOW

The decision of the Court of Appeals (App. A, infra) is not officially reported as of this time.

JURISDICTION

On April 20, 1982, the Petitioner filed a Petition for a Supervisory Writ of Mandamus and Certiorari with the United States Court of Appeals for the Eleventh Circuit. (App. B, infra). The Petition requested that the court issue its writ to require specific performance and/or any other proper relief that would correct the District Court's "clear abuse of discretion" in

rejecting a plea agreement between the Government and the Petitioner on March 30, 1982. (App. F, infra). Thereafter, on April 22, 1982, the Eleventh Circuit issued a decision denying the Petition, without an opinion. (App. A, infra). The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

This case involves Rule 11 of the Federal Rules of Criminal Procedure and the Due Process Clause of the United States Constitution, which are set out in Appendix I.

STATEMENT OF THE CASE

On December 9, 1981, a 25-page, 10 count Indictment was returned by a Federal Grand Jury in the Middle District of Florida, Tampa Division, charging HUDSON EUGENE HOLLOWAY, MARLENE PADOVAN, JAMES THRASHER, and the above-named Petitioner, SHEREE PATTERSON, with conspiracy, mail fraud, and wire fraud. The Petitioner is named in six (6) of these counts (App. C, infra)

Specifically, the Indictment alleged that the Petitioner, a then 19-year-old female, had participated with the three above-named co-defendants in a scheme to defraud various insurance companies of $16,000,000. As her part in this scheme, Petitioner had purportedly assisted Holloway by causing it to appear that Holloway had fallen off a yacht in the vicinity of the Florida Keys and was lost at sea. In exchange for Holloway's co-defendants' roles in faking his death, it was alleged that Holloway would pay them "a specified sum of money." Petitioner's actual acts which purportedly contributed to this charged conspiracy were: (1) leaving a handwritten note on the yacht for the Coast Guard which stated that Holloway had fallen overboard, and, (2) giving false oral statements of Holloway's

"death" to the attorney of Holloway's Estate and business. (App. C, infra).

The Indictment further charged that "Holloway had arranged to place a $50,000.00 contract on the life of any person who interfered with his plans." (App. C, A-14, infra).

At the arraignment in this cause, all four defendants entered pleas of "not guilty." The cause was then set for trial on January 18, 1982. A period of unusually pervasive pretrial publicity followed.

Subsequently, pursuant to Holloway's request for a continuance, the Court rescheduled the trial to April 5, 1982.

In March of 1982, the attorneys for Petitioner and her co-defendants had negotiated a "group deal" with the United States Attorney's Office. Petitioner and her co-defendants were to enter pleas of guilty to only the first count of the Indictment in exchange for certain penalties varying from as much as a five year imprisonment term to a minimum of a term of probation. Petitioner's attorney had specifically agreed with the Government that Petitioner would receive not more than a term of probation, accompanied by "not one hour of jail time." (App. G, infra). The agreement also provided that if probation was to be imposed, the District Judge could prescribe "such additional special conditions as the Court in its discretion may see fit to impose." (App. D, infra).

On March 25th and 29th, 1982, re-arraignments were held at which the four co-defendants and the Government presented their plea agreements to the District Judge.

Holloway stated that he was 44 years old, married with two children, had a high school education, and has been involved in the food and import-export businesses and restaurants. Miss Padovan was 32 years of age and possessed a Masters Degree in

Public Relations. The Petitioner, now 20 years old, stated that she had two years of college and had been previously employed with the Hillsborough County (Florida) Sheriff's Office and with an electrical contractor. Defendant Thrasher, a 44-year-old male, also possessed a Master's Degree and had been a teacher and pilot. (Transcript, March 29th hearing, pp. 8-12).

The District Judge thereafter informed the four defendants of all applicable constitutional rights, such as their rights to a trial by jury, to representation by an attorney, to present witnesses and a defense. Similarly, the Judge informed the defendants as to all repercussions of the entry of a guilty plea. In response, each defendant acknowledged that he or she had fully discussed the case and read the Indictment with his or her attorney; each knew of all available defenses; and was satisfied with the quality of his or her attorney's representation. Count I of the Indictment was then read to the defendants. (Transcript, March 29th hearing, pp. 14-19).

Thereafter, the District Judge informed Holloway of the maximum and minimum penalties that he could receive under his plea agreement. Holloway then testified that he was "guilty" to Count One of the Indictment; that he was pleading guilty because he was guilty; and he admitted that he had committed the acts set forth in the charge. (App. G, infra).

The District Judge then directed his inquiry towards the Petitioner. After informing the Petitioner that the maximum penalty that could be prescribed under her plea agreement with the Government was probation, the District Judge advised the Petitioner that this could include at the Court's discretion the imposition of confinement in a community treatment center as a special condition to her probation, pursuant to 18 U.S.C. §1651. Petitioner's attorney at once responded that he didn't think that the Government had intended imposition of such confinement during their plea negotiations. However, the District

Judge emphasized that it doesn't mean that he would necessarily impose "this sort of thing" as a special condition of probation. Rather, the District Judge was "just advising the Petitioner what the Court's authority is under this plea." (App. G, infra).

The District Judge again repeated, "I don't mean to indicate that I at this time feel that that would be appropriate in this case." He simply did not want Petitioner's counsel "to be surprised" in the event that the Court did in fact deem such a condition to be appropriate. (App. G, infra).

Petitioner's counsel again emphasized that incarceration was never envisioned in any way by himself or the Government in their plea negotiations, either as part of a straight sentence or as a special condition of probation. Nor was Padovan's attorney aware that a special condition of incarceration could be imposed under the terms of the plea agreements. (App. G, infra).

The District Judge then suggested to Petitioner's counsel, "Why don't you withdraw the plea at this point, and I will give you another day to consider. And if you want to withdraw it, you may do that, or if you want to enter the plea under these conditions, you may do that." The District Judge told the Petitioner that she is "entitled" to another day to consider it, since it had "apparently taken [her] attorney by surprise." (Appendix G).

In the meantime, the District Judge proceeded to inform Padovan and Thrasher as to the possible maximum and minimum penalties. The Judge explained that under her plea agreement Padovan could receive as long as a six (6) month imprisonment term, followed by a period of probation. In addition to the "standing terms and conditions of probation normally imposed," a special condition of sixteen (16) hours of community service work each month would be required at the discretion of the probation officer. The District Judge also informed Padovan that he could similarly impose a period of incarcera-

tion as a special condition of probation. Although Padovan's attorney had not previously discussed this possibility with his client, Miss Padovan stated that she understood the Court's authority. Thrasher, who would receive no more than a probation term as a penalty under the plea agreement, also stated that he understood the possibility of incarceration as a special condition of probation. (Transcript, March 29th hearing, pp. 33-39).

After a brief recess, Petitioner's attorney returned to the courtroom and informed the District Judge that his client was prepared to proceed in combination with certain recommendations of the Government. The Government specifically recommended that the Court does not confine the Petitioner to a community facility. The Petitioner had acknowledged that it was her understanding that the Court was not bound by the Government's recommendation against such confinement. However, Petitioner's counsel again explained that after painstaking plea negotiations with Government counsel, the plea agreement was reduced to writing with "the express understanding that incarceration was not in order either as a part of the straight sentence or as a special condition." The District Judge then replied, "Well, then this plea agreement does not set forth your agreement, is that what you are telling me?" Petitioner's counsel disagreed and pointed out that there had been a "meeting of the minds" between him and the Government. However, Petitioner's counsel maintained that the Court had a differing interpretation of the word "incarceration." (App. G, infra).

Petitioner's counsel then stated that he and his client were prepared to go forward with her guilty plea with an objection noted on the record in the event that such confinement would be eventually imposed as a special condition. The District Judge responded,

> "THE COURT: Then we don't have an agreement. Then you don't have an agreement. What you are telling me now —

MR. GONZALEZ: [Petitioner's counsel] No, we do —

THE COURT: Either accept what the Court is telling you or withdraw it. It's as simple as that.

MR. GONZALEZ: Judge, she is prepared to accept it, and she has accepted it with our objection.

THE COURT: Every time I tell you what the Court's discretion and authority is, you then tell me that's not your understanding and not your agreement.

MR. GONZALEZ: Judge, she is prepared to go forward. We —

THE COURT: I am going to reject this plea agreement as of now. If you want to discuss this further and can come up with something in writing that there is no question about that you understand, I will consider it again tomorrow. All right. You may leave, Mr. Gonzalez. We will set this for 3:00 for 4:00 o'clock. Let me know sometime tomorrow whether there is going to be a plea agreement or not.

You now understand the Court's position on that?

MR. GONZALEZ: Absolutely." (App. G, infra).

After Petitioner and her attorney departed from the hearing, the Court continued to obtain a full factual basis for the pleas of the remaining three co-defendants. The three co-defendants then admitted their participation in the scheme. (Transcript, March 29th hearing, pp. 48-65).

Thereafter, the District Judge accepted the guilty pleas of Holloway, Padovan and Thrasher, specifically finding a sufficient factual basis and that the pleas were entered freely, voluntarily, knowingly and intelligently. The Judge withheld adjudication of guilt until the sentencing hearing on May 12, 1982. (Transcript, March 29th hearing, pp. 70-72).

On the following day, March 30, 1982, the Government

prosecutor revised the original plea agreement with the Petitioner. (App. E, infra). Interlineated into the original agreement was a new provision which would limit those special conditions of probation that the District Judge could impose upon the Petitioner to those "other than confinement in a residential program."

Later that same afternoon, the continued re-arraignment was held. After the District Judge was presented with the revised plea agreement, he announced, "I'm not going to accept it the way it is. We might want to discuss it first." The Judge noted that he was not accepting the revised March 30th agreement since it would "be binding on the Court that it could not impose any confinement in a residential treatment center." However, the District Judge would accept a mere recommendation. (App. H, infra).

The prosecutor explained that his intent at the hearing on the day before was to make the recommendation against confinement. However, after consulting with the Petitioner's attorney, "the U.S. Attorney's Office decided to go one step further and enter into this [revised] plea agreement." (App. H, infra).

The District Judge then concluded that he was rejecting the revised March 30th plea agreement because...

> "I want that option because that's what probation is about, having an option such as that and I'm not going to exclude myself from that option." (App. H, infra).

After the District Judge stated that the only alternative is to try the case, he asked the Government if it is "ready to go." The prosecutor responded that he could not be ready by the next trial date of April 5, 1982...

> "That's next Monday. I really believed these plea

> agreements would go through. I didn't foresee this problem with Miss Patterson." (App. H, infra).

The Petitioner's counsel also noted that he needed at least an additional month to prepare. He explained that he had "shut things down" three or four weeks previously thinking that the cause would be resolved in a compromise; and he was still awaiting much *Brady* material from the Government. In addition, Petitioner's defenses required bringing in witnesses from out of Florida and Canada. (App. H, infra).

The District Judge then announced that the case would be tried not before April 15, 1982. The Judge told Petitioner's counsel:

> "That should give you time, Mr. Gonzalez, to — you may have to work a couple of nights."

Petitioner's counsel immediately informed the Judge that subpoenaing witnesses from Canada might require some additional time. He then asked the District Judge if he would entertain a request at a later time for an additional continuance of a week to ten days. The Judge responded:

> "You can always ask it, but I doubt that I'm going to give it. Right now, I'm going to calendar this for April 15; I expect to try it then." (App. H, infra).

Petitioner's re-arraignment thereafter concluded with the District Judge questioning the Petitioner as to her understanding of the basis for rejecting her plea. After Petitioner responded, "Yes," the Judge repeated, "I'm not going to be precluded from any alternatives. Of course, as I said earlier, that's no indication that I would exercise that option or that alternative, but I want to have it." (App. H, infra).

Thereafter, on April 5, 1982, the District Judge summoned counsel for the Petitioner and the Government for an in-

chambers conference. At this conference, the District Judge informed the parties that the trial would have to be continued to May 10, 1982; he had just learned of a three-day clerk selection conference called by the Chief Judge and of the impending wedding of the prosecutor. (Transcript, April 5th hearing, pp. 3-4).

Subsequently, on April 20, 1982, the Petitioner filed a Petition for a Supervisory Writ of Mandamus and Certiorari with the United States Court of Appeals for the Eleventh Circuit. As grounds for issuance of the writ, the Petitioner maintained the following two points:

(1) That it is a "clear abuse of discretion" for a District Judge to reject a plea agreement between an accused and the Government on the grounds that the Judge refused to relinquish on "option" to prescribe a certain special condition of probation, when it is actually the Government that has the ultimate prerogative over such a condition.

(2) A District Judge disrupts the orderly, even and efficient administration of justice in the circuit when he violates the prohibition of Rule 11(e), Federal Rules of Criminal Procedure, by indirectly participating in the plea bargaining process.

For relief, Petitioner requested specific performance of the March 30th plea agreement and/or any other remedy that the court would consider proper.

Thereafter, on April 22, 1982, an Order was entered by the Eleventh Circuit, therein denying the Petition without an opinion.

REASONS FOR GRANTING THE WRIT

A FEDERAL DISTRICT JUDGE DOES NOT HAVE UNBRIDLED AND ABSOLUTE DISCRETION TO REJECT A PLEA AGREEMENT BETWEEN THE GOVERNMENT AND AN ACCUSED UNDER RULE 11(e), FEDERAL RULES OF CRIMINAL PROCEDURE, AND THIS DISCRETION IS SUBJECT TO ABUSE IF A PLEA AGREEMENT IS REJECTED FOR AN UNSOUND REASON.

Voluntary settlements of litigation which may impose substantial burdens on the resources of the courts are "in high judicial favor." *Autera v. Robinson,* 419 F.2d 1197, 1199 (D.C.Cir., 1969). This long-accepted principle of civil litigation has been given increasing recognition recently in the criminal context, as the courts have come explicitly to recognize and encourage the "plea bargaining" process.

In *Santobello v. New York,* 404 U.S. 275, 260-262, 92 S.Ct. 495, 30 L.Ed.2d 427 (1971), this Court said:

> "The disposition of criminal charges by agreement between the prosecutor and the accused, sometimes loosely called "plea bargaining," is an essential component of the administration of justice. Properly administered, it is to be encouraged. If every criminal charge were subjected to a full-scale trial, the States and the Federal Government would need to multiply by many times the number of judges and court facilities.
>
> Disposition of charges after plea discussions is not only an essential part of the process but a highly desirable part for many reasons. It leads to prompt and largely final disposition of most criminal cases; it avoids much of the corrosive impact of enforced idleness during pre-trial confinement for those who are denied release pending trial; it protects the public from those accused persons who are prone to continue criminal conduct even while on pre-trial release; and, by shortening the time between charge and

> disposition, it enhances whatever may be the rehabilitative propects of the guilty when they are ultimately imprisoned."

Several other decisions of this Court have strongly endorsed the practice of plea bargaining as an essential function of the criminal justice system which, when properly controlled, confers substantial benefits on the defendant, the prosecutor, and the court. See *Brady v. United States,* 397 U.S. 742, 755 (1970), *McMann v. Richardson,* 397 U.S. 759 (1970), and *Bordenkircher v. Hayes,* 434 U.S. 357 (1978).

Notwithstanding this Court's emphatic encouragement of "plea bargaining," Congress amended the Federal Rules of Criminal Procedure in 1974 to set more specific procedures once a plea agreement has been reached. Rule 11(e) of the Federal Rules of Criminal Procedure, as amended in 1974, states simply that once a plea agreement is presented to a court by the prosecutor and the accûsed,

> "...the court *may accept or reject* the agreement, or may defer its decision until there has been an opportunity to consider the presentence report." (Italics added).

The question sought to be answered in this certiorari proceeding is centered around what reasons a district judge "may accept or reject" a plea agreement. Unfortunately Rule 11(e) fails to delineate the circumstances under which a court may do so.

The last word from this Court arguably bearing on this question was in *Santobello,* supra, 404 U.S. at 262:

> "There is, of course, no absolute right to have a guilty plea accepted. *Lynch v. Overholser,* 369 U.S. 705, 719, 8 L.Ed.2d 211, 220, 82 S.Ct. 1063(1962); *Fed. Rule Crim. Proc. 11.* A court may reject a plea in exercise of sound judicial discretion."

Just what are the boundaries of the district court's discretion is still undetermined. It has been noted on several occasions both before and after the 1974 amendment to Rule 11 that it has "not [been] decided precisely what circumstances may cause the refusal of a plea bargain to be an abuse of discretion." *United States v. Adams,* 634 F.2d 830, 835 (5th Cir., 1981); *United States v. Ammidown,* 497 F.2d 615, 619 (D.C.Cir., 1974).

The federal courts throughout this country have had dramatically varying ideas as to the actual boundaries of discretion in rejecting plea agreements.

On one end of the spectrum is the line of thinking of *United States v. Stamey,* 569 F.2d 805 (4th Cir., 1978) and *United States v. Moore,* 637 F.2d 1194 (8th Cir., 1981), which espoused the view that a district judge is not under any duty whatsoever to even consider a negotiated plea agreement.

In great contrast at the other end of the spectrum are decisions such as *United States v. Ammidown,* 497 F.2d 615 (D.C.Cir., 1974), *United States v. Hecht,* 638 F.2d 651, 656 (3rd Cir., 1981), *In re Arvedon,* 523 F.2d 914 (1st Cir., 1975), and *United States v. Rocco,* 397 F.Supp. 655 (D.Mass., 1975). C.f. *United States v. Gaskin,* 485 F.2d 1046 (D.C.Cir., 1972). These decisions emphasized the need for "sound judicial discretion" in rejecting a plea agreement.

In *Ammidown,* a case decided just before the effectiveness of the 1974 amendment to Rule 11, the D. C. Circuit held that a district judge had a *duty* to accept a consensual disposition of criminal charges absent some compelling reason to reject it. The D. C. Circuit had reversed the district judge's rejection of a plea agreement in an opinion strongly supportive of the role of plea bargaining in the criminal process. The Court of Appeals began its analysis with

> "the presumption that the determination of the United

> States Attorney is to be followed in the overwhelming number of cases. He alone is in a position to evaluate the government's prosecution resources and the number of cases it is able to prosecute."

The Court of Appeals viewed the process of plea bargaining as essentially an aspect of the prosecutor's discretion whether to bring charges, and if so, what to charge. It concluded that

> "a judge is free to condemn the prosecutor's agreement as a trespass on judicial authority only in a blatant and extreme case. In ordinary circumstances, the change in grading of an offense presents no question of the kind of action that is reserved for the judiciary.

The Court went on to find that the prosecutor's exercise of discretion, in agreeing to accept a plea, reflected a perfectly reasonable judgment respecting the use of his resources.

Likewise, for example, the Third Circuit in *Hecht,* 638 F.2d at 656, recently found an abuse of the district judge's discretion, holding that Rule 11 lodges a discretion in the court whether to accept or reject a plea, which "must be exercised in relation to the composite of factors which constitute the case." Further, the First Circuit in *Arvedon,* supra, held that it is an abuse of discretion for the Court to reject a plea agreement for a reason that is conflicting with or inconsistent with the underlying policy of another rule.

Somewhere in the middle of this spectrum is the thinking of *United States v. Bean,* 564 F.2d 700, 704 (5th Cir., 1977), in which the Fifth Circuit held that too light a sentence under the circumstances of a case is a "sound reason" for a district judge to reject a plea agreement.

The case *sub judice* is an excellent avenue for this Court to articulate the actual boundaries of a district judge's discretion in rejecting plea agreements under Rule 11(e). The District

Judge in this case provided a seemingly impermissible reason for rejecting the plea agreement between the Government and the Petitioner since the reason conflicted with a statutory prerogative ultimately belonging to the Government. Although indicating approval of a sentence of probation for the Petitioner in exchange for her guilty plea, the District Judge refused to exclude himself from the "option" of prescribing confinement in a residential community treatment center as a special condition to Petitioner's probation. However, he repeatedly emphasized that he was not indicating that he would ever actually impose such confinement. He just wanted that "option." (App. H, infra).

The District Judge's insistence in this case that he had absolute discretion to impose such a special condition was purportedly based upon the following provision of 18 U.S.C. § 1651:

> "The court may require a person as conditions of probation to reside in or participate in the program of a residential community treatment center, or both, for all or part of the period of probation: *Provided*, that the Attorney General certifies that adequate treatment facilities, personnel, and programs are available. If the Attorney General determines that the person's residence in the center or participation in its program, or both, should be terminated, because the person can derive no further significant benefits from such residence or participation, or both, or because his such residence or participation adversely affects the rehabilitation of other residents or participants, he shall so notify the court, which shall thereupon, by order, make such other provision with respect to the person on probation as it deems appropriate.
>
> A person residing in a residential community treatment center may be required to pay such costs incident to residence as the Attorney General deems appropriate."

A conscientious analysis of the foregoing provision reveals that it is actually the Attorney General's Office that has the ultimate prerogative of confinement in a community treatment center. This prerogative is based upon a number of factors, most important being the availability of such programs and the Government's determination that a probationer can gain "significant benefits" from such confinement. While a district judge may initially prescribe such a condition, it is the prosecutor that has the exclusive power to actually institute and continue such confinement.

In this case, the District Judge's rejection of the plea agreement was for an impermissible reason. The Assistant United States Attorney repeatedly and vigorously recommended against the District Judge's possible confinement of the Petitioner in accordance with probation. Following the District Judge's rejection of the original agreement, "the U.S. Attorney's Office decided to go one step further" beyond mere recommendations and entered into the revised plea agreement which specifically restricted the special conditions that could be imposed on the Petitioner to those "other than confinement in a residential program." (App. H, infra). From such decisive actions by the prosecutor, who alone was in a position to evaluate the full circumstances of Petitioner's case, it is apparent that the Attorney General's Office had already predetermined that the Petitioner's confinement in such a program was inappropriate. The reason given by the District Judge for rejecting the plea agreement between the Government and the Petitioner was therefore inherently unsound in that it essentially conflicted with the Government's ultimate prerogative over probationary residential programs under 18 U.S.C. § 1651.

This is not a situation where the District Judge refused to entertain any plea bargaining in his court or where the District Judge had a legitimate desire to retain certain exclusive powers. Rather, the District Judge here sought to invade the province of

the prosecutor by usurping an ultimate prerogative that belongs to the Government.

As a matter of policy, by interpreting Rule 11(e) as empowering a District Judge with the unbridled and absolute discretion to reject a plea agreement for any reason whatsoever, certain observations have been made:

> "First, courts which refuse to entertain plea agreements are likely to wind up with terribly crowded dockets, for by refusing to permit the parties to confine the court's sentencing power by agreement, they remove the most powerful incentive to waive the right to trial. Moreover, a refusal to entertain plea agreements inevitably places pressure on already understaffed prosecutors, who must, as a result of such a policy, be prepared to try every case they decide to bring. Such a burden may well curtain the effectiveness of the prosecutor's performance of his duties.
>
> Second, as a practical matter, courts which refuse to acknowledge plea bargaining do not, in the words of the Advisory Committee in 1974, "destroy it," they merely "drive it underground," a highly undesirable result in view of the very dangers which lead these courts to eschew it. The bargaining still takes place, but at an earlier time—before the indictment is brought—and the final charge is tailored to the terms of the bargain. This has numerous drawbacks. It eliminates any possibility of the exercise of judicial control over the bargaining process, especially in such sensitive matters as ancillary commitments by the prosecutor or the defendant. Moreover, by eliminating any possibility of compromise after an indictment is returned, it locks both sides in to positions staked out before motions practice, discovery and other developments may have given them a better feel for their respective litigating strengths and weaknesses.
>
> Third, it is vital for defense counsel to learn the attitude of the court toward plea bargaining at the earliest

> possible time, preferably before an indictment is returned. In this respect it is important to realize that some courts, while generally approving plea agreements, have strict policies against accepting certain kinds of agreements. Thus, certain federal courts routinely and uniformly reject agreements of the type contemplated by Rule 11(e)(1)(C), in which a particular sentence is agreed upon between the parties."

—2 *Arkin, et al: BUSINESS CRIMES* 5-26, 27 (Matthew Bender, 1981).

The question presented in this certiorari proceeding is a highly important question of federal law which has not been, but should be settled by this Court. The line of decisions which interpret Rule 11(e) as empowering a District Judge with unbridled and absolute discretion to reject a plea agreement, regardless of how seemingly unsound or impermissible the reason for rejection might be, is in substantial conflict with the very import of this Court's prior enunciations in *Santobello, Bordenkircher* and *Brady*. This question is a matter of great and general public importance in that it affects the very future of efficient judicial administration and a fair criminal justice system.

By summarily denying the Petitioner's supervisory writ of mandamus and certiorari, the Eleventh Circuit essentially sanctioned the District Court's invasion of the province of the prosecutor and the disruption of the efficient administration of justice, which calls for an exercise of this Court's power of supervision.

CONCLUSION

It is respectfully submitted that the present case presents important and substantial issues going to the very heart of the proper and efficient administration of justice. This Court must reaffirm the principle of "sound judicial discretion" for a district court to properly reject a plea agreement between the Government and an accused. Without such a reaffirmation establishing the scope of discretion, the federal courts of this nation will continue to be in conflict and district judges will be forced to blindly accept or reject a plea agreement without any sort of guidance. Logic alone, if not direct concepts of due process which attach to a defendant in any criminal proceeding, require that firm guidelines be established for an accused to waive his or her right to a jury trial through the entry of a guilty plea. A Writ of Certiorari should issue for the purpose of establishing these principles.

Respectfully submitted,

ANTHONY F. GONZALEZ,
ESQUIRE
and
SAMUEL R. MANDELBAUM,
ESQUIRE of
ANTHONY F. GONZALEZ, P.A.
First Florida Tower, Suite 2315
Tampa, Florida 33602
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APPENDIX A

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 82-5479

IN RE:
SHERRY PATTERSON,
Petitioner.

Appeal from the United States District Court
for the Middle District of Florida

Before GODBOLD, Chief Judge, JOHNSON and ANDERSON, Circuit Judges.
O R D E R:

IT IS ORDERED that petitioner's supervisory writ of mandamus and certiorari is denied.

APPENDIX B

IN THE UNITED STATES COURT OF APPEAL FOR THE ELEVENTH CIRCUIT

In re
SHEREE PATTERSON, CASE NO:
Petitioner.

PETITION FOR SUPERVISORY WRIT OF MANDAMUS AND CERTIORARI

COMES NOW the Petitioner, SHEREE PATTERSON, by and through her undersigned counsel, and respectfully petitions this Court pursuant to 28 U.S.C. §1651, Rule 21, Federal Rules of Appellate Procedure, and Rule 19, Interim Rules of the United States Court of Appeals for the Eleventh Circuit, to issue a writ of mandamus and certiorari to review the order of March 30, 1982, of the Honorable George C. Carr, United States District Judge, United States District Court for the Middle District of Florida, Tampa Division, therein rejecting a plea agreement subscribed to by the Petitioner and the Government (A 176). As grounds for this Petition, the Petitioner would state:

1. On December 9, 1981, a 10-count Indictment was returned by a Federal Grand Jury in the Middle District of Florida, Tampa Division, charging the above-named Petitioner, SHEREE PATTERSON, specifically with conspiracy, mail fraud, and wire fraud.

2. On March 25, 1982, the Petitioner and the Government subscribed to a plea agreement in which the Petitioner would enter a plea of guilty to a count in the Indictment filed against her in exchange for a penalty no greater than probation, with the express understanding that "not one hour of jail time" would be prescribed.

3. That at a rearraignment of the cause later that same day, the District Judge rejected the aforementioned plea agreement and urged the Petitioner and the Government to revise their agreement to comport with the expectations and the disposition apparently desired by the District Judge.

4. That through such urgings and suggestions, the District Judge violated his duty under Rule 11(e), Federal Rules of Criminal Procedure, to refrain from participation in the plea bargaining process. The District Judge herein essentially became a participant in the plea negotiations between the Petitioner and the Government.

5. That following the initial rejection of the aforementioned plea agreement, the Government and the Petitioner revised the plea agreement on March 30, 1982, therein specifically incorporating a provision that would preclude imposition of any penalty greater than probation in exchange for Petitioner's guilty plea, and would limit the special conditions of probation that could be prescribed to those "other than confinement in a residential program."

6. That notwithstanding the terms of the revised March 30th plea agreement between the Petitioner and the Government, The District Judge improperly interpreted 18 U.S.C. §3651 as allowing him the absolute discretion to prescribe confinement in a residential jail-type facility as a special condition to the Petitioner's probation.

7. That based upon his misapprehensions of his actual statutory powers under 18 U.S.C. §3651, the District Judge rejected the revised March 30th plea agreement on the grounds that he refused to relinquish the "option" to prescribe such confinement as a special condition. Such rejection was made over the Government's repeated recommendations against imposition of such a special condition and contrary to the Government's vigorous urgings upon the Court of acceptance of the March 30th agreement.

8. That in actuality, such an "option" to prescribe the foregoing special condition is not within the exclusive power of the District Judge under 18 U.S.C. §3651, but rather ultimately subject to the discretion and control of the Government, by and through the Attorney General's office.

9. That under the above circumstances it was a clear abuse of the District Judge's discretion to reject the March 30th plea agreement between the Government and the Petitioner.

10. That there is no adequate remedy at law or appellate process to correct the foregoing improprieties.

WHEREFORE, the Petitioner respectfully requests this Honorable Court to issue its writ in order to provide the following relief:

(a) To require specific performance of the plea agreement entered into between the Petitioner and the Government on March 30, 1982;

(b) To afford any other relief that this Court may deem just and proper.

Respectfully submitted,

ANTHONY F. GONZALEZ, P. A.

By /s/ Anthony F. Gonzalez
ANTHONY F. GONZALEZ, ESQUIRE

By /s/ Samuel R. Mandelbaum
SAMUEL ROBERT MANDELBAUM, ESQUIRE

APPENDIX C

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA	*	
v.	*	Case No. 81- -Cr-T-
HUDSON EUGENE HOLLOWAY, a/k/a JAMES LaRUE, MARLENE PADOVAN, SHEREE PATTERSON, and JAMES THRASHER	*	Violation: 18 U.S.C. 371 18 U.S.C. 1341 18 U.S.C. 1343 18 U.S.C. 1623

The Grand Jury charges that:

COUNT ONE

1. From on or about June 1, 1981, up to and including the date of this Indictment, in the Middle District of Florida and elsewhere, the defendants,

HUDSON EUGENE HOLLOWAY
a/k/a JAMES LaRUE,
MARLENE PADOVAN,
SHEREE PATTERSON
and
JAMES THRASHER,

did unlawfully, knowingly, willingly and intentionally conspire, combine, confederate and agree with each other and other persons, known and unknown to the grand jury, to commit offenses against the United States, that is:

(a) To knowingly and willingly use and cause to be used, the United States Postal Service by mailing and causing to be mailed matters and things, for the purpose of executing a scheme and artifice to defraud and for obtaining money by means of false and fraudulent pretense, representation and promises, in violation of Title 18, United States Code, Section 1341.

(b) To knowingly and willfully transfer and cause to be transferred by means of wire communications in interstate commerce, between locations outside the Middle District of Florida and locations within the Middle District of Florida, certain signs, signals and sounds for the purpose of executing a scheme and artifice to defraud and for obtaining money by means of false and fraudulent pretenses, representations and promises, in violation of Title 18, United States Code, Section 1343.

(c) To knowingly and willfully falsify, conceal and cover up by trick, scheme and device a material fact, and to make false, fictitious and fraudulent statements and representations knowing the same to contain false, fictitious and fraudulent statements and entries, in violation of Title 18, United States Code, Section 1001.

(d) To knowingly and willfully state and subscribe a material matter not believed to be true after having taken an oath that the person will testify, declare, depose or certify truly before a competent tribunal officer or person in any case in which a law of the United States authorizes an oath to be administered, in violation of Title 18, United States Code, Section 1621.

(e) To knowingly and willfully make a false and material declaration while a witness and under oath in a federal grand jury of the United States, in violation of Title 18, United States Code, Section 1623.

(f) To knowingly and willfully procure another to commit perjury in violation of Title 18, United States Code, Section 1622.

2. It was part of the conspiracy that the defendant, HUDSON EUGENE HOLLOWAY, would obtain life insurance and that the defendants, MARLENE PADOVAN, SHEREE PATTERSON and JAMES THRASHER, would assist the defendant, HUDSON EUGENE HOLLOWAY, in causing it to appear that the defendant, HUDSON EUGENE HOLLOWAY, was dead. The proceeds of approximately $16,000,000.00 in life insurance would thereby by utilized to satisfy debts of the defendant, HUDSON EUGENE HOLLOWAY, and the Sea Wolf Restaurant, Inc., to produce income to all of the defendants,

and to provide the defendant, HUDSON EUGENE HOLLOWAY, with the finances necessary to engage in the drug smuggling business.

3. It was among the manner and means by which the defendants would and did carry out the conspiracy that:

(a) The defendant, HUDSON EUGENE HOLLOWAY, would and did have his life insured for approximately $16,000,000.00. Included in this amount was a $5,000,000.00 policy assigned to Cayman Island Seafood Company, Grand Cayman, Cayman Island, West Indies, a company the defendant, HUDSON EUGENE HOLLOWAY, had a major interest in and three policies totaling approximately $5,766,000.00 listing Marjorie L. Patterson as owner and beneficiary. Also included among the $16,000,000.00 in life insurance were a number of policies totalling approximately $3,000,000.00 payable to Debbie Holloway with assignments to various creditors of the defendant, HUDSON EUGENE HOLLOWAY, and the Sea Wolf Restaurant, Inc.

(b) The defendant, HUDSON EUGENE HOLLOWAY, would and did on or about August 26, 1981, publish and declare an instrument an instrument to be his last will and testament, revoking and cancelling any and all other wills and codicils previously made. In said will the defendant, HUDSON EUGENE HOLLOWAY, did nominate and appoint Marjorie L. Patterson to be the personal representative of his last will and testament. In said will, the defendant, HUDSON EUGENE HOLLOWAY, did confer upon Marjorie L. Patterson the power to compromise, settle or adjust any claims or demands by or against the estate or any trusts created by HUDSON EUGENE HOLLOWAY. In said will, the defendant, HUDSON EUGENE HOLLOWAY, created a trust, effective at the time of his death, consisting of *inter alia* the Sea Wolf Restaurant of Tampa, Service Brokerage Company, Inc., North Tampa Airport, Templeton Energy Stock, and Calcutta Properties. His personal representative was to administer this trust for the sole benefit of Cayman Seafood Company, Grand Cayman, Cayman Island, West Indies.

(c) On or about August 28, 1981, the defendant, HUDSON EUGENE HOLLOWAY, would and did charter the yacht

MT 44 "Mamous" for a period of approximately ten days for the purpose of fabricating his fraudulent death.

(d) On or about September 4, 1981, the defendant, HUDSON EUGENE HOLLOWAY, would and did depart the State of Florida for New York, New York. On the same date, at approximately 9:30 p.m., the defendants, MARLENE PADOVAN, SHEREE PATTERSON and JAMES THRASHER, would and did report to officers of the United States Coast Guard that the defendant, HUDSON EUGENE HOLLOWAY, had fallen overboard from the vessel MT 44 "Mamous" in the vicinity of the Florida Keys and was apparently lost at sea knowing the same to be false.

(e) During August, 1981, it was agreed among the defendants that MARLENE PADOVAN, SHEREE PATTERSON and JAMES THRASHER would receive a specified sum of money from the defendant, HUDSON EUGENE HOLLOWAY, in return for making false statements concerning the death of the defendant, HUDSON EUGENE HOLLOWAY, and in return for their continuing efforts to conceal the true whereabouts of the defendant, HUDSON EUGENE HOLLOWAY.

(f) During September, 1981, the defendant, HUDSON EUGENE HOLLOWAY, would and did receive false and fraudulent identification in the name of JAMES LaRUE in an effort to conceal his true identity.

(g) During September, 1981, the defendant, HUDSON EUGENE HOLLOWAY, would and did make and receive numerous telephone calls between a location outside of the State of Florida and a location within the Middle District of Florida in order to promote and manage the conspiracy concerning his alleged death. The defendants, HUDSON EUGENE HOLLOWAY and SHEREE PATTERSON, would and did travel from a location outside of the State of Florida to a location within the Middle District of Florida in order to promote and manage the events surrounding the alleged death of the defendant, HUDSON EUGENE HOLLOWAY.

(h) During September through December 7, 1981, the defendants, HUDSON EUGENE HOLLOWAY, MARLENE

PADOVAN, SHEREE PATTERSON and JAMES THRASHER, and others would and did perform acts and make statements to hide and conceal and cause to be hidden and concealed the purpose of the consoiracy and the acts committed in furtherance thereof.

OVERT ACTS

4. Among the overt acts which the defendants, HUDSON EUGENE HOLLOWAY, MARLENE PADOVAN, SHEREE PATTERSON and JAMES THRASHER, committed in furtherance of the conspiracy, in the Middle District of Florida and elsewhere, were:

(a) On or about June 15, 1981, the defendant, HUDSON EUGENE HOLLOWAY, did apply to American Foundation Life Insurance Company for life insurance in the amount of approximately $5,766,000.00.

(b) On or about July 16, 1981, the defendant, HUDSON EUGENE HOLLOWAY, did accept from the American Foundation Life Insurance Company life insurance coverage in the amount of approximately $5,766,000.00, designating the estate of the insured as the beneficiary.

(c) On or about July 21, 1981, the defendant, HUDSON EUGENE HOLLOWAY, changed the ownership and beneficiary of the insurance described in paragraph 4(b) of this indictment to Marjorie L. Patterson.

(d) On or about August 6, 1981, the defendant, HUDSON EUGENE HOLLOWAY, did apply to American Foundation Life Insurance Company for life insurance in the amount of approximately $5,000,000.00.

(e) On or about August 16, 1981, the defendant HUDSON EUGENE HOLLOWAY, did accept from American Foundation Life Insurance Company life insurance coverage in the amount of approximately $5,000,000.00, designating Service Brokerage Company, Inc., as the beneficiary.

(f) On or about August 12, 1981, the defendant, HUDSON EUGENE HOLLOWAY, did cause the mailing of the

premium due on the insurance described in paragraph 4(b) of this indictment.

(g) In or about August, 1981, the defendant, HUDSON EUGENE HOLLOWAY, did assign the life insurance described in paragraph 4(d) of this indictment to Grand Cayman Seafood Cor ,any, Grand Cayman, Grand Cayman Islands, West Indies.

(h) In or about August, 1981, the defendant, HUDSON EUGENE HOLLOWAY, traveled to the Grand Cayman Islands where he discussed the plans concerning his upcoming disappearance and fake death with Jeffrey Seals.

(i) In or about August, 1981, the defendants, HUDSON EUGENE HOLLOWAY, MARLENE PADOVAN and SHEREE PATTERSON, made a trip to the Grand Cayman Islands.

(j) On or about August 28, 1981, the defendant, HUDSON EUGENE HOLLOWAY, chartered the yacht MT 44 "Mamous" for a period of approximately ten days.

(k) On or about August 29, 1981, the defendant, HUDSON EUGENE HOLLOWAY, had a conversation in which the defendant, HUDSON EUGENE HOLLOWAY, stated that he was planning to disappear while on his upcoming boat trip; that the defendants, MARLENE PADOVAN, SHEREE PATTERSON and JAMES THRASHER, would be onboard the boat with him and a specified sum of money was to be paid to the defendants, MARLENE PADOVAN, SHEREE PATTERSON and JAMES THRASHER, in exchange for their role in faking his death; and that the defendant, HUDSON EUGENE HOLLOWAY, had arranged to place a $50,000.00 contract on the life of any person who interferred with his plans.

(l) On or about August 29, 1981, the defendants, HUDSON EUGENE HOLLOWAY, MARLENE PADOVAN, SHEREE PATTERSON and JAMES THRASHER, departed Clearwater, Florida, onboard the MT 44 "Mamous".

(m) On or about September 2, 1981, the defendant, MARLENE PADOVAN, entered into a mooring and dockage

agreement with the City of Miami for the MT 44 "Mamous".

(n) In or about September, 1981, the defendant, HUDSON EUGENE HOLLOWAY, obtained a false and fraudulent New York State drivers license and a false and fraudulent New York State birth certificate in the name of JAMES LaRUE.

(o) On or about September 4, 1981, prior to 5:00 p.m., the defendant, HUDSON EUGENE HOLLOWAY, did depart the State of Florida for New York City, New York.

(p) On or about September 4, 1981, the defendant, HUDSON EUGENE HOLLOWAY, did register at the Hotel Wellington, New York City, New York, as JAMES LaRUE of New Orleans, Louisiana.

(q) On or about September 4 and September 5, 1981, the defendants, MARLENE PADOVAN, SHEREE PATTERSON and JAMES THRASHER, reported to officers of the United States Coast Guard that the defendant, HUDSON EUGENE HOLLOWAY, had fallen overboard from the vessel MT 44 "Mamous" in the vicinity of the Florida Keys and was lost at sea.

(r) On or about September 6, 1981, the defendant, HUDSON EUGENE HOLLOWAY, placed a phone call from the Hotel Wellington, New York City, New York, to Tampa, Florida, in order to discuss the cover-up concerning his alleged death.

(s) On or about September 7, 1981, the defendant, HUDSON EUGENE HOLLOWAY, placed a phone call from the Hotel Wellington, New York City, New York, to Plant City, Florida, in order to discuss the cover-up concerning his alleged death.

(t) On or about September 11, 1981, the defendant, HUDSON EUGENE HOLLOWAY, placed a phone call from the Hotel Wellington, New York City, New York, to Thonotosassa, Florida, in order to discuss the cover-up concerning his alleged death.

(u) On or about September 11, 1981, the defendant,

HUDSON EUGENE HOLLOWAY, did cause the mailing of the premium due on the life insurance described in paragraph 4(b) of this indictment.

(v) On or about September 12, 1981, the defendants, HUDSON EUGENE HOLLOWAY and SHEREE PATTERSON, traveled from New York City, New York, to Orlando, Florida, so that SHEREE PATTERSON could give false statements to an attorney concerning the alleged death of the defendant, HUDSON EUGENE HOLLOWAY.

(w) On or about September 12, 1981, the defendants, MARLENE PADOVAN, SHEREE PATTERSON and JAMES THRASHER, gave false statements concerning the alleged death of the defendant, HUDSON EUGENE HOLLOWAY, to an attorney in order to cause the attorney to take the appropriate action to have the defendant, HUDSON EUGENE HOLLOWAY, declared legally dead.

(x) On or about September 16, 1981, the defendants, HUDSON EUGENE HOLLOWAY, MARLENE PADOVAN, SHEREE PATTERSON and JAMES THRASHER, caused an attorney to pay the premium due on the insurance described in paragraph 4(d) of this indictment.

(y) In or about October, 1981, the defendant, HUDSON EUGENE HOLLOWAY, departed the United States of America and arrived in Canada.

(z) On or about October 13, 1981, the defendant, MARLENE PADOVAN, did give false testimony to a federal grand jury concerning the alleged death of the defendant, HUDSON EUGENE HOLLOWAY.

(aa) On or about November 10, 1981, the defendant, HUDSON EUGENE HOLLOWAY, did undergo plastic surgery in an attempt to alter his appearance.

(bb) On or about November 12, 1981, the defendant, HUDSON EUGENE HOLLOWAY, was in the possession of approximately $260,000.00 in Canadian currency and a false and fraudulent New York State drivers license.

All in violation of Title 18, United States Code, Section 371.

APPENDIX D

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA,	:	
vs.	:	CASE NO.: 81-140-Cr-T-GC
SHEREE PATTERSON	:	

PLEA AGREEMENT

The Defendant, SHEREE PATTERSON, and the United States Attorney mutually agree as follows:

> The Defendant shall plead guilty to Count one of the indictment and be sentenced to a period of probation for such time as the Court in its discretion may determine. The period of probation shall be subject to the standing terms and conditions of probation normally imposed in this Court, plus such additional special conditions as the Court in its discretion may see fit to impose. At the time of sentencing, the United States shall move to dismiss Counts three through seven of the indictment.

It is understood that the Court may impose a less severe sentence than that (if any) embodied in this agreement; but in the event the Court otherwise rejects this agreement, the Defendant shall then be given an opportunity to withdraw her plea of guilty.

The Defendant acknowledges that she is entering into this agreement and is pleading guilty freely and voluntarily without reliance upon any discussions between the attorney for the Government and the Defendant or her attorney and without

promise of benefit of any kind (other than the concessions contained herein); and without threats, force, intimidation or coercion of any kind. The Defendant further acknowledges her understanding of the nature of the offense or offenses to which she is pleading guilty, and the elements thereof, including the penalties provided by law; and her complete satisfaction with the representation and advice received from her undersigned counsel. The Defendant also understands that she has the right to plead not guilty or to persist in that plea if it has already been made, and that she has the right to be tried by a jury with the assistance of counsel, the right to confront and cross examine the witnesses against her, the right not to be compelled to incriminate herself, and the right to compulsory process for the attendance of witnesses to testify in her defense; but by pleading guilty, she waives or gives up those rights and there will be no trial. The Defendant further understands that if she pleads guilty the Court may ask her questions about the offense or offenses to which she had pleaded guilty, and if she answers those questions under oath, on the record and in the presence of counsel, her answers may later be used against her in a prosecution for perjury or false statement. The Defendant also understands that she will be adjudicated guilty of the offense or offenses to which she had pleaded and may thereby be deprived of certain civil rights such as the right to vote, to hold public office, to serve on a jury, and to have possession of firearms.

This Agreement shall be presented to the Court, in open Court, and filed in this cause, at the time of rearraignment for the purpose of Defendant's entry of a plea of guilty pursuant hereto.

The undersigned counsel certify that this Agreement has been read by (or has been read to) the Defendant, and that Defendant fully understands its terms.

Dated this 25th day of March, 1982.

/s/_____
Defendant (Individually)

/s/_____
for GARY L. BETZ
United States Attorney

/s/_____
Counsel for Defendant

/s/_____
TERRANCE A. BOSTIC
Assistant United States
Attorney

APPENDIX E

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA, :

vs. : CASE NO.:
81-140-Cr-T-GC

SHEREE PATTERSON :

PLEA AGREEMENT

The Defendant, SHEREE PATTERSON, and the United States Attorney mutually agree as follows:

The Defendant shall plead guilty to Count one of the indictment and be sentenced to a period of probation for such time as the Court in its discretion may determine. The period of probation shall be subject to the standing terms and conditions of probation normally imposed in this Court, plus such additional special conditions, other than confinement in a Residential Program, as the Court in its discretion may see fit to impose. At the time of sentencing, the United States shall move to dismiss Counts three through seven of the indictment.

It is understood that the Court may impose a less severe sentence than that (if any) embodied in this agreement; but in the event the Court otherwise rejects this agreement, the Defendant shall then be given an opportunity to withdraw her plea of guilty.

The Defendant acknowledges that she is entering into this agreement and is pleading guilty freely and voluntarily without reliance upon any discussions between the attorney for the

Government and the Defendant or her attorney and without promise of benefit of any kind (other than the concessions contained herein); and without threats, force, intimidation or coercion of any kind. The Defendant further acknowledges her understanding of the nature of the offense or offenses to which she is pleading guilty, and the elements thereof, including the penalties provided by law; and her complete satisfaction with the representation and advice received from her undersigned counsel. The Defendant also understands that she has the right to plead not guilty or to persist in that plea if it has already been made, and that she has the right to be tried by a jury with the assistance of counsel, the right to confront and cross examine the witnesses against her, the right not to be compelled to incriminate herself, and the right to compulsory process for the attendance of witnesses to testify in her defense; but by pleading guilty, she waives or gives up those rights and there will be no trial. The Defendant further understands that if she pleads guilty the Court may ask her questions about the offense or offenses to which she had pleaded guilty, and if she answers those questions under oath, on the record and in the presence of counsel, her answers may later be used against her in a prosecution for perjury or false statement. The Defendant also understands that she will be adjudicated guilty of the offense or offenses to which she had pleaded and may thereby be deprived of certain civil rights such as the right to vote, to hold public office, to serve on a jury, and to have possession of firearms.

This Agreement shall be presented to the Court, in open Court, and filed in this cause, at the time of rearraignment for the purpose of Defendant's entry of a plea of guilty pursuant hereto.

The undersigned counsel certify that this Agreement has been read by (or has been read to) the Defendant, and that Defendant fully understands its terms.

Dated this 30th day of March, 1982.

/s/_____
Defendant (Individually)

/s/_____
for GARY L. BETZ
United States Attorney

/s/_____
Counsel for Defendant

/s/_____
TERRANCE A. BOSTIC
Assistant United States
Attorney

APPENDIX F

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

CLERK'S MINUTES

CASE NO.: 81-140-Cr-T-GC

TITLE: U.S.A. vs. SHEREE PATTERSON

ATTORNEY(S) FOR GOVERNMENT	ATTORNEY(S) FOR DEFENDANT(S)
Terrence Bostick	Anthony Gonzalez

PROCEEDINGS:
Re-Arraignment

4:00 P.M. — Court rejected plea agreement; Case set for trial April 15, 1982 @ 9:30 A.M.

4:20 P.M. — Court recessed.

HONORABLE GEORGE C. CARR, JUDGE

COURT REPORTER: ROSIE SCLAFANI

DATE: MARCH 30, 1982

APPENDIX G

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	CASE NO.:
	)	81-140-Cr-T-GC
	)	
HUDSON EUGENE HOLLOWAY, MARLENE PADOVAN, SHEREE PATTERSON, and JAMES THRASHER,	)	
Defendants.		

TRANSCRIPT OF PROCEEDINGS
March 29, 1982

* * *

THE COURT: Mr. Holloway, how do you plea to Count One of the indictment that I have read to you?

DEFENDANT HOLLOWAY: Guilty, sir.

THE COURT: Are you pleading guilty because you are guilty, and do you now admit that you committed the act set forth in the charge?

DEFENDANT HOLLOWAY: I do, sir.

THE COURT: Do you fully understand all of the rights and procedures which have been explained to you and which you have—which you give up by pleading guilty?

DEFENDANT HOLLOWAY: I understand that.

THE COURT: Can the Court safely assume then that your plea is entered with a full understanding of what you are doing here?

DEFENDANT HOLLOWAY: That's correct, sir.

THE COURT: All right. I will hear a factual basis for Mr. Holloway and I assume it will apply to all of the Defendants, and I will hear it a little later.

MR. BOSTICK: Yes, Your Honor.

THE COURT: Now, Miss Patterson, you are now advised that the maximum sentence which could be imposed under your plea of guilty without a plea agreement is five years in prison or a $10,000 fine or both, or the Court in its own discretion could sentence you to a lesser term or you could be considered for probation.

Now, the maximum penalty under your proposed plea agreement is that you be sentenced to a period of probation for such time as the Court in its discretion may determine. The period of probation shall be subject to the standing terms and conditions of probation normally imposed in this court, plus such additional special conditions as the Court in its discretion may see fit to impose.

And at the time of sentencing, the United States shall move to dismiss Counts Three through Seven of the indictment which apply to you.

Now, you should be advised that the Court under this plea agreement could impose a special condition of probation it felt was warranted, which could require you to be incarcerated in a

community treatment service or center, community treatment center. Do you understand that?

DEFENDANT PATTERSON: Yes, sir.

THE COURT: Did you explain that to her?

MR. GONZALEZ: Judge, I have not explained that to her. I didn't recognize that to be one of the conditions, and I didn't think that the Government had intended in the plea negotiations as to Miss Patterson—

THE COURT: Well, it may not be their intent, and I don't know what it is. I just have to fully advise you as to what the consequence of this plea is.

And the Court has authority under a plea or on a sentence of probation to require a defendant to serve some time in a community treatment center. I think normally it's not more than a hundred and twenty days, or—it could be a number of things devised in a probative sentence, such as community service, things of that nature.

Do you understand that, Miss Patterson?

DEFENDANT PATTERSON: Yes, sir.

THE COURT: All right.

MR. GONZALEZ: Judge, I wonder if I might have a moment to address that with my client?

THE COURT: Surely. Step aside, if you would like.

MR. GONZALEZ: Your Honor, might we leave the courtroom?

THE COURT: You may. Let's just rest a moment while they confer.

MR. LUND: Your Honor, to save some time, would you cite to me the provision—I want to look at the provision of the rule that related to that.

I think the same may apply to my client, although our plea agreement provides for a maximum period of time of six months. I don't know if it is possible the Court could do both.

And I also have not discussed that possibility with my client.

THE COURT: Well, you had better discuss it with her how. I don't have a cite for you, but you can take my word for it. I have done it.

MR. LUND: Judge, is—

THE COURT: I think I have done it in cases in which you have been involved.

MR. PIZZO: I think it's 3651, Judge.

MR. LUND: Judge, are you talking about a period of actual—are you talking about something that involves supervision, or are you talking about something that actually involves incarceration or—I am not familiar with what the provisions—

THE COURT: It involves incarceration.

MR. PIZZO: Goodwill.

THE COURT: Goodwill, Salvation Army, things of that nature. Restrain, maybe just during the night, this sort of thing. I don't—

MR. GONZALEZ: Your Honor, we would like to address the record in that regard to the latest consideration in the Court's accepting this plea agreement.

We would like to, Your Honor, reserve the right if the Court sees fit to, and as a special condition of the probation, to place Miss Patterson in some form of incarceration, whether it be minimal or whatever, to withdraw our plea at that time and stand in the position that we stand before this plea was entered.

THE COURT: Now, you are going to have to decide right now whether you are going to go forward—

MR. GONZALEZ: Judge, I think—

THE COURT: I don't mean to indicate that I would as a special condition of probation require Miss Patterson or Miss Padovan, and I think it's going to apply to Mr. Thrasher, I won't require necessarily that they go to Goodwill and this sort of thing.

I am just advising you what the Court's authority is under this plea as it is presented to me.

MR. GONZALEZ: Judge, I understand that. And the plea agreement was reached between the Government and the Defendant, and it was my understanding that the Government's position in coming to this compromise was that they would not expect nor would they seek that Miss Patterson in any way be incarcerated.

The special condition now of probation which could cause a form of incarceration is not something that Miss Patterson or myself or even the Government discussed. I think that it's an additional factor.

And I think that if the Government's intention was that she

not serve any period of incarceration, that they could make it a part of their plea agreement by orally amending that agreement at this time and so stating it—

THE COURT: I don't know what they can do, other than agree that the Court can impose a period of probation.

MR. GONZALEZ: And that would be sufficient, and ask that as part of their agreement here that they not—

THE COURT: It's an inherent authority of the Court under the sentence of probation to require, if it so chooses, some sort of incarceration in a community treatment center. I am just advising you of that. If that's not your agreement, then you might as well withdraw it right now.

MR. GONZALEZ: Judge, I think that we stand in a position to have to consider that more in depth with our client. I would like to study the special conditions which are available to the Court, exactly what they mean. I have no idea. Some people say—

THE COURT: I am telling you right now.

MR. GONZALEZ: I don't feel like I am in a position at this time to advise her fully on her rights as it pertains to that special condition. And—

THE COURT: Well, you may withdraw your plea agreement, Mr. Gonzalez, if you care to.

MR. GONZALEZ: Your Honor, in — I would—obviously—

THE COURT: Let me suggest this. Why don't you withdraw the plea at this point, and I will give you another day to consider. And if you want to withdraw it, you may do that, or

if you want to enter the plea under these conditions, you may do that.

MR. GONZALEZ: Judge, I think that's very fair. Would you give us twenty-four hours to return before this Court on that matter?

THE COURT: All right. We'll do that. You may leave.

MR. GONZALEZ: All right. Thank you.

THE COURT: May we should reset this now, just so I will have a time, and you will have a time to reappear. Can somebody get my calendar?

Please understand, Mr. Gonzalez, the Court is obliged under a Rule 11 proceeding to set it out, all of the alternatives, and this is an alternative. And I would hate for you to come up at a sentencing if the Court thought that that was an appropriate sentence in the case or an appropriate condition of probation, to be surprised about it. I think it's time you found out about it.

Again, I don't mean to indicate that I at this time feel that that would be appropriate in the case. I have no idea.

We could reset this for 4:00 o'clock tomorrow.

MR. GONZALEZ: Your Honor, my client has advised me that she has some mixed emotions about it, and if she could have another couple of minutes to discuss it with us, we might be inclined to move forward. I think that's the drift that I am getting from her, but I want her to fully understand it.

THE COURT: All right. Well, you have plenty of time, Miss Patterson. I am not rushing you on this. Apparently it has taken your attorney by surprise. If you would like another day to consider it, you are certainly entitled to it.

MR. GONZALEZ: Thank you, Your Honor.

THE COURT: Well, we are going to proceed as best we can. And on the others there will be some questions, Mr. Gonzalez, so let me know—or I am going to have some questions of the other Defendants that will be directed just to them and not to your client, so it will be all right for you to be out.

But when we get to the point where we get to the factual basis, I will need for you to make a decision one way or the other on that.

MR. GONZALEZ: Thank you, Your Honor.

THE COURT: All right. Let's go to Miss Padovan. Miss Padovan, you are advised that the maximum sentence which could be imposed under your plea of guilty without a plea agreement is that you—is five years in prison or a $10,000 fine or both or the Court in it's own discretion could sentence you to a lesser term or you could be considered for probation.

* * *

THE MARSHAL: All rise, please. Order in the Court. The Court is again in session. Be seated, please.

THE COURT: Come forward again, please.

First, Mr. Gonzalez, have you made a decision whether you want to proceed or take additional time?

MR. GONZALEZ: Your Honor, if I might have just a moment to clarify the record as to my client's position, she has advised me that she is prepared to proceed based on some recommendations that the Government is going to make to the Court supplementing this plea agreement.

But I would like to point out to the Court that earlier when the provision of the special condition was discussed with my client, I became somewhat concerned, because after some painstaking negotiations, plea negotiations with Government counsel, this compromise which was reached today and reduced—or reached last week on the 25th and reduced to writing and presented to the Court at that time, was reached by the Government and the Defendant with the express understanding that incarceration was not in order either as a part of the straight sentence or as a special condition.

Now, for that reason we noted our objection, because that was the understanding that the Government and I had with respect to Miss Patterson.

I recognize now that the Court has explained that that is a special condition, and I simply wanted to note my objection for that reason.

THE COURT: Well, apparently then this written plea agreement does not set forth your agreement, is that what you are telling me?

MR. GONZALEZ: It sets it out, except that there is a different interpretation put on the word incarceration. When I spoke to Mr. Bostick, Mr. Bostick and I, I believe, had a meeting of the minds that incarceration meant incarceration in the form of some jail type institution, one, or incarceration in the form of some special condition that would require any sort of incarceration.

That was the meeting of the minds between the Government and I. We reached that agreement, and I certainly recommended that to my client.

If that interpretation is somewhat different that what the Court interprets incarceration to mean, then maybe the plea

agreement is not as specific as it should be to protect all of the parties under the due process clause of the Consitution.

THE COURT: All I know is what you have in the plea agreement. In Title 18 it's 3651, which provides that this is the Court's authority, and it's within its discretion to require that a condition of probation be spent or time spent in a community treatment center. That's all I am telling you. I am not saying that's what I would require.

MR. GONZALEZ: I understand that, Judge. And that's why it was so important to try to articulate what was meant by incarceration.

And I think Mr. Bostick has some statement to make to the Court to amplify our feelings about that interpretation.

THE COURT: Would you get the clerk to ask the attorneys to gather up in front?

(Off-the-record discussion.)

THE COURT: All right. Well, what do you want to do?

MR. GONZALEZ: Judge, with that, noting that objection, if there is any future problem, it's in the record, she is prepared to go forward, and I believe that the Government is going to make some sort of a statement to you in regards to our interpretation of that provision of the plea agreement.

MR. BOSTICK: Okay, Your Honor. The plea agreement was entered into on behalf of the Government and Miss Patterson. We recognize that as a special condition of probation the Court could order Miss Patterson confined to a confinement center or local treatment center.

In this case, although we will not make it part of our plea

agreement, it is the recommendation of the Government that the Court not exercise its discretion in that area and not confine Miss Patterson to a community facility. However, we recognize that is in the discretion of the Court.

THE COURT: Is that now your agreement?

MR. GONZALEZ: It is our understanding of what they are recommending. I understand what he is saying—not to be—

THE COURT: Well, do you understand that is merely a recommendation and would not be binding on the Court.?

MR. GONZALEZ: I recognize it to not be binding on the Court. And, again, my negotiations and my understanding of our interpretation of the plea agreement is that it does not—it does not—and that is the plea agreement that we signed on the 25th, that it does not interpret the special condition of incarceration to be a part of it.

THE COURT: All it says is that I am bound to appear—to sentence this Defendant to appear to probation. All I am telling you that I could require is a special condition of that probation, a period of confinement in a community treatment center.

I think maybe you should withdraw this plea agreement and bring it back in a form that you—you have confused the record, as far as I am concerned.

MR. GONZALEZ: Judge, as far as I am concerned, and my representation of my client, we are certainly not confused, and she is prepared to go forward with the noted record which I have just stated here today. We are now prepared to enter the plea, she has signed it, and—

THE COURT: All right. Do you understand then that the only thing added to this written plea agreement is now an agree-

ment by the United States that they will recommend to the Court at sentencing that the Defendant not be confined to some community treatment center as a special condition of probation?

MR. GONZALEZ: That is my understanding.

THE COURT: That is your understanding.

Miss Patterson, do you understand that?

DEFENDANT PATTERSON: Yes, sir.

THE COURT: Do you again understand that the Court would not be bound by that recommendation of the United States?

DEFENDANT PATTERSON: Yes, sir.

THE COURT: And that the Court would have the discretion at sentencing to accept this plea agreement but make a special condition of probation that you be confined in some community treatment center for some period of time? It could be as much as the period of probation, as I understand it.

MR. GONZALEZ: That's correct. And, Your Honor, and our objection goes to specifically if there is any incarceration, whether it be a special condition or a straight condition—

THE COURT: Well, I couldn't if—under this plea agreement give a straight jail sentence.

MR. GONZALEZ: But as a special condition, if that particular portion of the sentence includes some sort of—we keep calling the word incarceration—

THE COURT: Let's use the word confinement.

MR. GONZALEZ: Let's use the word confinement, in some local Goodwill center for two hours a day, whatever. Our objection goes to that. We have interpreted it to mean—on behalf of Miss Patterson, we have interpreted that to mean a form of incarceration or confinement, and we note our objection—

THE COURT: Then we don't have an agreement. Then you don't have an agreement. What you are telling me now—

MR. GONZALEZ: No, we do—

THE COURT: Either accept what the Court is telling you or withdraw it. It's as simple as that.

MR. GONZALEZ: Judge, she is prepared to accept it, and she has accepted it with our objection.

THE COURT: Every time I tell you what the Court's discretion and authority is, you then tell me that's not your understanding and not your agreement.

MR. GONZALEZ: Judge, she is prepared to go forward. We—

THE COURT: I am going to reject this plea agreement as of now. If you want to discuss this further and can come up with something in writing that there is no question about that you understand, I will consider it again tomorrow. All right. You may leave, Mr. Gonzalez. We will set this for 3:00—for 4:00 o'clock. Let me know sometime tomorrow whether there is going to be a plea agreement or not.

You now understand the Court's position on that?

MR. GONZALEZ: Absolutely.

THE COURT: All right.

Mr. Lund, what's your position?

MR. LUND: Judge, we are prepared to go forward. I would advise the Court that I did look at the statute. I talked to the Probation Office as well. They were unaware of any situation where the Court gave an actual jail sentence for six months plus a community service provision, but they did tell me that they would take the position that the Court could do that in—

THE COURT: I think so. I have never heard of it.

MR. LUND: Neither have I, Judge.

THE COURT: You just should be advised that the Court has the discretion to do that and the authority to do that.

MR. LUND: In fact, being brought to our attention, the Court would also have the discretion,

* * *

APPENDIX H

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	CASE NO.:
	)	81-140-Cr-T-GC
	)	
SHEREE PATTERSON,	)	
	)	
Defendants.	)	
	)	

TRANSCRIPT OF PROCEEDINGS

March 30, 1982

* * *

THE MARSHAL: This Honorable Court is again in session. Please be seated and come to order.

THE COURT: Mr. Gonzalez, Miss Patterson, you can come forward, please. I think where we left off yesterday was that I had advised the defendant as to the maximum penalty that this charge carries with it and then discussed the proposed maximum penalty in the plea agreement and that's where we were hung up; is that your recollection?

MR. GONZALEZ: That's correct, Your Honor.

THE COURT: Well, I've just been furnished a copy, apparently, and we will continue on from there. And I've been furnished now what is purported to be a copy of the plea agreement. Would you want to look at it? Have you signed a new plea agreement?

MR. GONZALEZ: Your Honor, we have not. We just received it right now and was discussing it with my client and we're—

THE COURT: Have you had sufficient time to do that?

MR. GONZALEZ: Judge, if we could have one more minute with her? I apologize. We got it at five minutes till, and it's obviously been very fair to us to give us the opportunity to resolve these difficulties.

THE COURT: All right, take a few minutes. Go back to counsel table and we'll wait. I think it won't take you but a minute. It didn't take me but a half a second to see the difference.

Excuse me, Mr. Gonzalez. It may be that we could discuss it somewhat and then—so you could have an understanding about it and then you can discuss it with your client if you would like.

MR. GONZALEZ: Judge, I—

THE COURT: Well, I'm telling you that because I'm not going to accept it the way it is. We might want to discuss it first.

MR. GONZALEZ: Fine, Judge.

THE COURT: All right, why don't you come forward and let's do that. It may save some time.

As I understand this proposed plea agreement, now, it

would provide that the defendant, Miss Patterson, be sentenced to a period of probation for such time as the Court in its discretion may determine and the period of probation shall be subject to the standing terms and conditions of probation normally imposed in this Court, plus such additional special conditions other than confinement in a residential program as the Court in its discretion may see fit to impose. It would be the Court's interpretation and it appears obvious that this would be binding on the court and it would be the intention of the parties that it be binding on the Court that it would not impose any confinement in a residential treatment program and the Court is not going to accept that. I will accept a mere recommendation, as I said. Is that your intent, Mr. Bostick?

MR. BOSTICK: Our intent yesterday, Your Honor, was to make the recommendation. However, after conferring with Mr. Gonzalez, the U.S. Attorney's Office decided to go one step further and enter into this plea agreement.

THE COURT: Well, I'm not going to accept that. As I indicated yesterday, I would accept a recommendation and leave it solely to the discretion of the Court without any indication that I would require that. I have no idea that I would, but I want that option because that's what probation is about, having an option such as that and I'm not going to exclude myself from that option. Mr. Gonzalez, in addition to that, I asked the probation office to do some research, primarily concerned whether the Court could impose some confinement in a community treatment center after a split sentence had been imposed, in other words a six-month incarceration, plus probation. That applied only to Mr. Lund's client. They have done that. And I've asked the probation office to provide you a copy with a memoranda as well as a copy to Mr. Lund so for whatever information you care to use that.

MR. GONZALEZ: Judge, I was just handed that memorandum and I have not—excuse me, about five minutes

ago—Judge, I take it that that memorandum had nothing to do with your rejecting this plea agreement.

THE COURT: No, it has nothing to do with that.

MR. GONZALEZ: Fine.

THE COURT: That's just an aside. I'm telling you why I'm rejecting the plea agreement. Here's a copy.

All right. The alternative, of course, is to try this case. Are you ready to go, Mr. Bostick?

MR. BOSTICK: We were originally set for April 5th, Your Honor.

THE COURT: That's next Monday.

MR. BOSTICK: That's next Monday. I really believed these plea agreements were going to go through. I didn't foresee this problem with Miss Patterson. The Government could not be ready on April 5th, but it could be ready one week from April 5th on April 12th.

THE COURT: How is that with you?

MR. GONZALEZ: Judge, when I was first contacted about this plea agreement, it was almost, I guess, three to four weeks ago when Mr. Winkles had approached it in trying to solve it with all the defendants resolving it in a compromise. I shut things down at that point because I felt relatively sure, and I need to get some information from the Government under Brady versus Maryland now. The circumstances have changed, and I think there's a lot of information that we're entitled to defend Sheree Patterson in her own single trial. And I would like to have at least a month, Your Honor, to make up for the month we've lost.

THE COURT: How long do you think it will take now?

MR. BOSTICK: To try the case with one defendant?

THE COURT: Yes.

MR. BOSTICK: I believe the Government could put its case on in three to four days, Your Honor. Perhaps not even that long.

THE COURT: This is not my regular calendar. How long do you think it will take you?

MR. GONZALEZ: Your Honor, I think our case would take no more than three days to put on. We do have, I would advise the Court that I believe that under the changed circumstances, our defense will require bringing witnesses from outside of the State of Florida, that procedurally I'm not sure subpoena-wise how—

THE COURT: How many Counts would you be proceeding on now? Miss Patterson is not involved in all the counts, is she?

MR. BOSTICK: She's involved, Your Honor, in six Counts and we would proceed on all of them.

THE COURT: All right. We'll try this case not before April 15th. That should give you time, Mr. Gonzalez, to—you may have to work a couple of nights.

MR. GONZALEZ: Judge, you do recognize subpoenaing witnesses from possibly Canada might require some additional time. I would ask the Court to leave it open for us to come back and ask for additional time, maybe another week, ten days.

THE COURT: You can always ask it, but I doubt that I'm

going to give it. Right now, I'm going to calendar this for April 15th; I expect to try it then.

MR. GONZALEZ: Your Honor, we're going to have, I'm sure, motions that need to be settled. Can we anticipate that we'll have a hearing on those as soon as possible.

THE COURT: What type motions?

MR. GONZALEZ: Well, we have numerous pretrial motions. First of all, there's going to be some Brady versus Maryland material that we're going to be requesting. I don't know what the Government's position is going to be on disclosing that information.

THE COURT: If it's Brady material, they don't have any option about that.

MR. BOSTICK: That's right, if it's Brady material, Your Honor.

MR. GONZALEZ: And moving it along to be able to try it by the 15th, you know, I would like to, if the Court could give us a hearing date like next Friday to solve all of these pre-trial problems so that the following week we will have all the information so it's not coming to us in a piecemeal fashion, that would certainly help the defendant.

THE COURT: Well, that's presupposing that you're entitled to a hearing. I'll have to review the file and review any pending motions and if I feel I need some help and need a hearing, I'll set one. If not, I'll rule on the motions based on the memoranda.

MR. GONZALEZ: Judge, let me—

THE COURT: Is there going to be any suppression motions?

MR. GONZALEZ: There will be one, the suppression question as to the statement that was made to attorney Mr. Mullis, I believe it was.

THE COURT: All right. Is that something we can handle at trial?

MR. BOSTICK: I believe it is, Your Honor. The motion has been made, was made on behalf of all the defendants, the Government filed response; I think it's a very clear-cut issue. It's a legal issue, not a factual issue.

MR. GONZALEZ: Your Honor, I would also like to advise the Court there are a couple of things I think we ought to put on the record since this is the first time that we've come to the awareness that it would be rejected. I think there are cases that stand for the proposition and we'll file a formal motion going to this, that any continuance requested and denied where there's been a breakdown in the plea agreements, any motion to continue that has been denied requires due process standards as far as—

THE COURT: I didn't deny your motion. I just granted it for ten days.

MR. GONZALEZ: I'm asking for more than time up to April 15th, and I'll do it in a formal motion.

THE COURT: You know you're entitled to file anything you like.

MR. GONZALEZ: Secondly, Your Honor, I think that I would like to do some research and file a motion for change of venue, motion for a change within the district. Maybe, I'm not

saying to go somewhere that would be of a total inconvenience to all the parties, but possibly as far out as Orlando or possibly Jacksonville.

THE COURT: Now, that could very well be a problem and we might as well discuss that because of the pervasive publicity in this case, but particularly in light of the recent publicity that certainly co-defendants have pled guilty and I suspect there were some articles, although I haven't analyzed the articles, that have indicated that this defendant intended to plead guilty.

MR. GONZALEZ: That's correct, Your Honor.

* * *

APPENDIX I

RULE 11(e), FEDERAL RULES OF CRIMINAL PROCEDURE

(e) Plea Agreement Procedure.

(1) In General. The attorney for the government and the attorney for the defendant or the defendant when acting pro se may engage in discussions with a view toward reaching an agreement that, upon the entering of a plea of guilty or nolo contendere to a charged offense or to a lesser or related offense, the attorney for the government will do any of the following:

(A) move for dismissal of other charges; or

(B) make a recommendation, or agree not to oppose the defendant's request, for a particular sentence, with the understanding that such recommendation or request shall not be binding upon the court; or

(C) agree that a specific sentence is the appropriate disposition of the case.

The court shall not participate in any such discussions.

(2) Notice of Such Agreement. If a plea agreement has been reached by the parties, the court shall, on the record, require the disclosure of the agreement in open court or, on a showing of good cause, in camera, at the time the plea is offered. If the agreement is of the type specified in subdivision (a)(1)(A) or (C), the court may accept or reject the agreement, or may defer its decision as to the acceptance or rejection until there has been an opportunity to consider the presentence report. If the agreement is of the type specified in subdivision (e)(1)(B), the court shall advise the defendant that if the court does not accept the recom-

mendation or request the defendant nevertheless has no right to withdraw his plea.

* * *

CONSTITUTION OF THE UNITED STATES, AMENDMENT V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

END OF DOCKET